84-247

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ALEXANDER L. STEVAS
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No.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

Lavaun Chetister, Petitioner

v.

James G. Chetister

COURT OF APPEALS, OHIO SIXTH DISTRICT

JURISDICTIONAL STATEMENT

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---

45 pp

QUESTIONS PRESENTED

1. Is the Supreme Court of Ohio the sole policeman in the state of Ohio, with the duty to enforce the state procedural laws in the state appellate process, and, if so, were the actions of the highest state court discriminatory, arbitrary or oppressive in applying Ohio Revised Code § 2505.29 (App. H- no appeal filed without leave of supreme court; exceptions) and denying its jurisdiction to appellant for a review of the opinion and judgment of an intermediate court of appeals, when said opinion and judgment on its face showed that appellant was denied equal treatment under state appellate Rule 12(A), as construed by the Supreme Court of Ohio in C. Miller Chevrolet v. Willoughby Hills (App. I - "[i]n fairness to the parties, a Court of Appeals which contemplates a decision

upon an issue not briefed should, as the Court of Appeals in this case did, give the parties notice of its intention and an opportunity to brief the issue"), thereby denying appellant the equal protection of the laws guaranteed by the Fourteenth Amendment, and effectively abridging her right to a jury trial under the Seventh Amendment in a directed verdict setting?

2. When a directed verdict judgment of a trial court is appealed as a matter of right to a state court of appeals, and when that intermediate court's opinion and judgment sustaining the trial court shows, on its face, unequal application of state procedural law, was the denial of appellate review by the Supreme Court of Ohio, under the guise of discretion, in fact a subtle and therefore more dangerous form of discriminatory state action so oppressive and substantive that the "discretion[ary]" act

of the state's highest court causes a chilling effect upon the exercise of Fourteenth Amendment rights when appellant and appellants similarly situated seek redress of grievances against their state government, an intermediate court of appeals and a common pleas court?

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OPINIONS BELOW

The April 11, 1984 order of the Supreme Court of Ohio overruling appellant's motion for an order directing the Court of Appeals for Lucas County to certify its record to the Supreme Court of Ohio, and the May 9, 1984 order denying appellant's motion for a rehearing, which are yet unreported, appear as Appendix A and B respectively, to this Jurisdictional Statement, pp. 22,23.

The reported opinion of the Court of Appeals for the Sixth Appellate District appear as Appendix C, pp. 24-29, dated February 3, 1984.

The unreported opinion of the trial court setting in Lucas County, Ohio, appears as Appendix D, pp.30-33, and its September 16, 1983 order overruling appellant's motion for a new trial appears as Appendix E, p. 34.

JURISDICTION

The final order of the Supreme Court of Ohio was entered on April 11, 1984; the order denying rehearing was entered May 9, 1984. The federal question was raised at the earliest opportunity, as indicated at p.14-15,infra. The excerpts from the record showing the raising of the federal questions are set out in Appendix G, pp. 37-41. The jurisdiction of this Court is invoked under the provisions of 28 U.S.C. § 1254(3).

CONSTITUTIONAL PROVISIONS, STATUTES INVOLVED

The Seventh Amendment to the Constitution of the United States provides:

> "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial

by jury shall be preserved, and no fact tried by a jury shall be otherwise examined in any court of the United States, than according to the rules of the common law."

The Fourteenth Amendment provides in pertinent part:

"[N]or shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

1. JURY DEMAND FACTS: In 1982 appellant filed a civil action in fraud against her ex-husband, alleging a confidential relationship which he employed to get appellant to sign away her interests in the house of the parties by way of a quitclaim deed placed underneath a pile of "loan papers", with no attorneys present. Appellant's amended complaint prayed for money damages only and a trial by jury.

2. PROCEDURAL FACTS: In 1983 the trial judge took the jury away from appellant on a directed verdict (App. D). As

required by Ohio Civil Rule 50(E), (App.K), the trial court stated its reasons-- three in all-- for granting the directed verdict, thus satisfying the "significant purpose" of the rule: to enable a party to challenge the trial court's ruling on appeal.

Appellant timely challenged the trial court's ruling on appeal to a state court of appeals. This is an appeal as of right under Ohio law (App. J- O.R.C. § 2505.03, and Appellate Rule 3). Appellant thoroughly briefed the three reasons, citing pertinent case law in an effort to show their infirmity on appeal.

Instead of deciding the assigned error of law covering all three reasons of the trial court, and briefed by appellant on appeal, the intermediate appellate court decided the directed verdict question for a reason advanced for the first time, and advanced only by it, in its Decision and Journal Entry (App. C) and repeated twice therein:

> "The record in this case reveals that the appellant failed to present any evidence as to any of the elements noted in Lipman, supra." (Emphasis appellant's.)
>
> "[A]ppellant has failed to prove all the elements necessary to establish a cause of action for fraud."

Lipman, an Ohio case law precedent, requires proof of six (6) elements in an action for fraud. Never, until it appeared in the written decision of the state court of appeals, had anyone--- the trial judge, appellant or defendant-appellee-- raised the issue of all six elements of fraud on appeal. In fact, the appellee had raised one element when he stated his reason for his motion for a directed verdict as required by CivR 50, but this one element was completely disbelieved by the trial court as it went on to grant the directed verdict for the three reasons of (1) no contract for lost property (2) statute of limitations and (3) laches (App. L at pp. 46,47).

On its face, the Decision and Journal

Entry of the intermediate state court of appeals showed that (1) it grounded its decision upon an issue not briefed and (2) it did not "give the parties notice of its intention and an opportunity to brief the issue" (six elements of fraud).

Yet state appellate Rule 12(A), as construed nine years before by the Supreme Court of Ohio in C. Miller Chevrolet v. Willoughby Hills, 38 Ohio St. 2d 298, 313 N.E. 2d 400 (1974), requires:

> "In fairness to the parties, a Court of Appeals which contemplates a decision upon an issue not briefed should, as the Court of Appeals in this case did, give the parties notice of its intention and an opportunity to brief the issue."

Appellant timely filed with the Supreme Court of Ohio a "Memorandum In Support of Claimed Jurisdiction Of Supreme Court", and stated her reason why said highest state court should exercise its discretion and take jurisdiction:

"To prevent legal larceny of the jury by lower courts in Ohio. To construe AppR. 12(A) and harmonize it with CivR. 50(E)."

Appellant's first proposed Proposition of Law in said Memorandum stated:

" In an appeal from a trial court's directed verdict to a court of appeals,where reviewing court sustains the trial court for a reason or reasons other than those written into the entry or dictated into the record and argued separately by appellant in her brief, and where reviewing court does not first pass upon the basis of the decision set forth and argued by appellant in her brief, the court of appeals commits an irregularity in obtaining judgment on review and it shall be vacated." (Emphasis appellant's).

Appellant then defined "irregularity" with the supreme court's own words by stating in her Memorandum:

"In Van DeRyt v. Van DeRyt (1966), 6 Ohio St. 2d 31, the Supreme Court defined 'irregularity' which is the basis for vacation: '[w]ant of adherence to some prescribed rule or mode of proceeding.'"

The Supreme Court of Ohio overruled her motion for a review of the written decision

of the intermediate court of appeals(App.A).

Appellant filed a timely motion for a rehearing and stated:

> "[T]he refusal of the Supreme Court of Ohio to take jurisdiction in this case on April 11, 1984, is sufficient evidence to show a deliberate attempt to discriminate, denying appellant the right to equal treatment under the law as guaranteed by the Fourteenth Amendment, and, further, denies appellant her right to a jury trial as guaranteed by *** Seventh Amendment to Constitution of United States." (App. G at pp. 37-41).

3. FEDERAL QUESTION RAISED; STATE EVASION:

On May 9, 1984, the Supreme Court of Ohio denied appellant's motion for a rehearing. Each of said motions was overruled without opinion or other explanation. It was only after the written Opinion and Journal Entry of the state court of appeals showed on its face that appellant was denied equal treatment under the law could appellant raise the Federal question for the first time, by the next step under Ohio procedural rules which was an appeal to the

state's highest court. Petitioner's Federal claims were thus made at the earliest opportunity, even though said claims were not made until the highest state court of last resort was reached, petitioned, and denied without review of the Federal questions presented. The highest state court evaded review of the Federal questions by employing discretionary local rules of procedure, discussed infra.

REASONS FOR GRANTING THE PETITION

There are "special and important reasons":

First, constitutional rights guaranteed by the Constitution of the United States are involved: unequal treatment of law under the Fourteenth Amendment and loss of the right to a jury trial under the Seventh Amendment as a result of a directed verdict of the trial court.

Second, appellant's attack on the constitutionality of the Ohio discretionary

statute (leave to appeal), as applied to her, holds the "only promise of relief" for her [Orr v Orr, 440 US 268, 59 L Ed 2d 306, 99 S Ct 1102(1978),J. Brennan], since the facts show that the Supreme Court of Ohio was the last, and the first, state court in which she could raise her constitutional rights, with review being denied, and this Court and all other federal courts are prohibited "from ordering state officials to conform their conduct to state law" (Pennhurst v Halderman, 52 LW 4155 (1984), Justice Powell, construing Eleventh Amendment), thus no writ or order from this Court to the Supreme Court of Ohio. Should this Court deny appellant jurisdiction to consider her federal claims, her state case becomes res judicata and offical immunity of the seven justices of the Ohio Supreme Court bars any suit against them for money damages in a separate suit against the state.

Third, this case is of "importance to the public as distinguished from that of the parties" [Layne & Bowler Corp. v Western Well Works, Inc., 261 US 387, 393, 67 L Ed 712, 714, 43 S Ct 422 (1923). Impact outside the limits of this case is demonstrated by the fact that in Ohio there are other appellants similarly situated, as shown by the fact that as far back as 1974, other appellants in a directed verdict setting had the issue of "fairness and notice" under Ohio appellate rule 12(A) to contend with in seeking equal treatment of appellate review in the intermediate courts. This Court can take judicial notice of the fact that directed verdict settings inviting appellate review are not that uncommon, not only in Ohio but in most, if not all, of the United States. Without the fairness and notice that was denied to appellant herein, no meaningful opportunity remains to exercise the first appeal as of right to

the intermediate state court. The practical and costly result to appellant, and to all appellants similarly situated, is the loss of a state created right by subtle but oppressive state action--- so oppressive that it denies these appellants equal justice in the state courts.

Fourth, the facts showed that the rejection of review by the highest state court was not sound judicial decision, but, instead, was an oppressive, arbitrary and discriminatory application of law as applied to appellant as (1) the Supreme Court of Ohio, though its state function is judicial, is the only "policeman" in Ohio with the duty to see that procedural law is enforced equally, i.e., no uniformed policeman or state troopers to protect her procedural rights as they protect her substantive rights under state law, (2) appellant's unequal treatment of procedural law was plainly evident on the face of the

lower court's written opinion, and (3) appellant brought these relevant factors to the attention of the highest court. Under these facts, there was no area of discretion remaining in its discretionary power to review or not to review under O.R.C. §2505.29. These facts show a constitutional necessity, distilled from the discretion, to grant review to appellant. Its so-called discretionary act not to review was the greatest of State oppression--- denial of equal justice in its courts. It has a chilling effect on Ohio citizens seeking redress of grievances in state courts.

Fifth, the facts showed that Ohio's highest court evaded review of the Federal questions presented to it as (1) the opinion of the court of appeals showed on

its face unequal application of state procedural law substantially affecting substantive rights, (2) the Federal question did not arise, and could not be presented, until appellant's appeal to the highest state court, and (3) the highest state court's rejection of review was grounded entirely on local rules of appellate procedure, i.e., no appeal granted without leave of supreme court, and conflicts with:

> "Whatever springes the State may set for those who are endeavoring to assert rights that the State confers, the assertion of Federal rights, when plainly and reasonably made, is not to be defeated under the name of local practice." [Davis v Wechsler, 263 US 22, 68 L Ed 143, 44 S Ct 13 (1923), Justice Holmes].

Sixth and last, the loss of a meaningful appeal as of right to the intermediate court, because the state's highest court, under the guise of discretion in applying state procedural rules, denies review which is mandated--- not discretioned--- by the

facts of the case, "seriously affect the fairness, integrity, or public reputation of judicial proceedings" (Wiborg v United States, 163 US 632, 41 L Ed 289, 16 S Ct 1127 (1896), not just in Ohio, but in all of these United States, via newspaper and national TV coverage. This is the greatest loss of all, to all of us.

CONCLUSION

The petition for jurisdiction of the Supreme Court of the United States should be granted.

Walton H. Donnell
ATTORNEY FOR APPELLANT

August 6, 1984

APPENDIX A

THE SUPREME COURT OF OHIO

THE STATE OF OHIO, : 1984 TERM

City of Columbus. : To wit: April 11, 1984

Lavaun Chetister, : No. 84-336

Appellant, : MOTION FOR AN ORDER DIRECTING THE COURT

vs. : OF APPEALS

James G. Chetister, : for LUCAS County

Appellee. : TO CERTIFY ITS RECORD

It is ordered by the Court that this motion is overruled.

COST:

Motion Fee, $20.00, paid by W.H. Donnell .....
.....

I, James Wm. Kelly , Clerk of the Supreme Court of Ohio, certify that the foregoing entry was correctly copied from the Journal of this Court.

Witness my hand and the seal of the Court

this ..... day.....19.....
..... Clerk
..... Deputy

APPENDIX B

THE SUPREME COURT OF OHIO

COLUMBUS

THE STATE OF OHIO, 1984 TERM

City of Columbus.

Lavaun Chetister, To Wit: May 9, 1984
Appellant,

vs.

Case No. 84-336

James G. Chetister,
Appellee. REHEARING

It is ordered by the court that rehearing in this case is denied.

I, JAMES WM. KELLY, Clerk of the Supreme Court of the State of Ohio, certify that the foregoing entry was correctly copied from the Journal of this Court.

Witness my hand and the seal of the court this 9th day of May, 1984.

_____ Clerk.

By _____ Deputy.

APPENDIX C

COURT OF APPEALS OF OHIO, SIXTH DISTRICT

COUNTY OF LUCAS

C. A. NO. L-83-318

Lavaun Chetister	APPEAL FROM
APPELLANT	LUCAS COUNTY COMMON PLEAS COURT
-VS-	
James G. Chetister, et al.	NO. CV 82-1161
APPELLEES	DECISION AND JOURNAL ENTRY

DATE: February 3, 1984

This cause came on to be heard upon the record in the trial court. Each assignment of error was reviewed by the court and upon review the following disposition made:

This is an appeal from the Court of Common Pleas of Lucas County, Ohio. On August 24, 1983, the court granted appellees' motion for a directed verdict as to appellant's cause of action for damages. On September 1, 1983, appellant filed a motion for a new trial. On September 16, 1983, such motion was overruled.

From these judgments, appellant, Lavaun Chetister, filed a timely appeal, stating the following assignment of error:

> "1. The Court erred in granting the motion of defendant-appelle for a Directed Verdict pursuant to Civ. R. 50(A)(4).
>
> "2. The judgment is contrary to law."

Because of similarity of content, appellant's first and second assignments of error will be considered together. Appellant contends, in essence, that the alleged fraudulent acts of the appellees induced her to inadvertently sign a quitclaim deed.

In the case of Friedland v. Lipman (1980), 68 Ohio App. 2d 255, at the first paragraph of the syllabus, the court determined that a claim of common law fraud requires proof of a representation or concealment of a fact which is material to a transaction, is made with knowledge of its falsity or with utter disregard for its veracity,with the intention of misleading

another into justifiably relaying upon it and which reliance is the proximate cause of the plaintiff's injury.

The record in this case reveals that the appellant failed to present any evidence as to any of the elements noted in Lipman, supra. Appellant admitted upon cross-examination that no one had represented to her that the quitclaim deed she signed was a mortgage paper. She had just assumed that the deed was a loan paper presented for her signature. Appellant further testified that no one ever told her that half of the real property located at 8650 Arquette Road, Oregon, Ohio, belonged to her.

Appellant further admitted at trial that she had had the present ability and the opportunity to read all of the documents which she signed on the date in question, but that she had, of her own volition, neglected to do so. In Dice v. Akron, Canton &

APPENDIX C

Youngstown Rd. Co. (1951), 155 Ohio St. 185, the Supreme Court made the following determination with regard to a person's volitional omission to read a legal paper before signing it:

> "A person of ordinary mind cannot say that he was misled into signing a paper which was different from what he intended to sign when he could have known the truth by merely looking when he signed. DeCamp V. Hamma, Exr., supra (29 Ohio St. 467), 471, 472. If this were permitted, contracts would not be worth the paper on which they are written. If a person can read and is not prevented from reading what he signs, he alone is responsible for his omission to read what he signs.* * *" Dice V. Akron, Canton & Youngstown Rd. Co., supra, at 191, rev'd. on other grounds, (1952) 342 U.S. 359.

Cf. Leedy v. Ellsworth Construction Co. (1966), 9 Ohio App. 2d 1, wherein the court determined that:

> "2. A signer of a mortgage, who is of ordinary mind and can read and is not prevented from reading what he signs and who signs an instrument which is, in fact, a

> mortgage and denominated as such thereon, is negligent in signing such paper without reading it and does not have a defense thereto on the ground of fraud by claiming that the paper he signed was something other than what it actually was." (Emphasis added.) (See second paragraph of the syllabus.)

Clearly, when the evidence adduced at trial is construed most strongly in favor of the appellant, reasonable minds can only conclude that, based upon the evidence submitted, appellant has failed to prove all the elements necessary to establish a cause of action for fraud.

Pursuant to Civ. R. 50(A)(4), we find that the trial court properly granted the motion for a directed verdict and that said decision is not contrary to law. Having so determined, we will not consider the issue of the statute of limitations. For these reasons, appellant's assignments of error Nos. 1 and 2 are found not well taken.

On consideration whereof, the court

finds that substantial justice has been done the party complaining, and judgment of the Court of Common Pleas of Lucas County is affirmed. This cause is remanded to said court for execution of judgment and assessment of costs. Costs to appellant.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure. See also Supp. R. 4, amended 1/1/80.

Andy Douglas, _____ PRESIDING JUDGE

Peter M. Handwork, and _____ JUDGE

Alice Robie Resnick, JJ., _____ JUDGE

CONCUR.

APPENDIX D

IN THE COURT OF COMMON PLEAS OF LUCAS COUNTY, OHIO

Lavaun Chetister,	)	CASE NO. 82-1161
Plaintiff,	)	JUDGMENT ENTRY
vs.	)	Charles S. Wittenberg Attorney for Defendant
James G. Chetister,	)	540 Spitzer Building Toledo, Ohio 43604
Defendant.	)	(419) 243-3261 (9604)

***

This action came on for trial before the Court and a Jury, and upon defendant's Motion for a Directed Verdict. The Court finds, after construing the evidence most strongly in favor of plaintiff, that reasonable minds can come to but one conclusion upon the evidence submitted and that conclusion is adverse to plaintiff as to her cause of action for damages.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that defendant's Motion for a Directed Verdict as to plaintiff's cause of action for damages be and the same hereby is granted.

APPENDIX D

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that an equitable lien shall be and hereby is placed upon the real estate of the defendant located at 8650 Arquette Road in Oregon, Ohio, and more fully described as follows:

> The West one hundred twenty (120) feet of the north one hundred eighty-one and five tenths (181.5) feet of the north forty (40) rods of the northeast quarter (1/4) of Section thirty-four (34), Town nine (9) south, Range nine (9) east, Jerusalem Township, Lucas County, Ohio.

IT IS FURTHER ORDERED that said equitable lien shall be in an amount equal to any deficiency plaintiff may suffer in the future as a result of the sale of said

property, loss to the property by casualty, or by any foreclosure of the mortgage granted to the Small Business Administration on April 2, 1974, and recorded at the office of the Lucas County Recorder in Volume 2828, page 131 of Mortgages.

IT IS FURTHER ORDERED that said equitable lien shall be and is hereby extinguished upon the release and satisfaction of the mortgage granted to the Small Business Administration on April 2, 1974, and recorded in the office of the Lucas County Recorder at Volume 2828, page 131 of Mortgages.

IT IS FURTHER ORDERED that defendant shall maintain casualty insurance on the aforementioned real property in an amount not less than the pay-off of both principal and interest on the mortgage granted to the Small Business Administration on April 2, 1974 and recorded in the office

of the Lucas County Recorder at Volume 2828, page 131 of Mortgages.

IT IS FURTHER ORDERED that defendant shall provide to plaintiff a memorandum copy of the aforementioned casualty insurance policy.

IT IS FURTHER ORDERED that plaintiff shall pay the costs incurred herein.

s/s Judge Robt. V. Franklin, JR.
Judge

APPROVED AS TO FORM ONLY:

_____
Walton H. Donnell
Attorney for Plaintiff

s/s Charles S. Wittenberg
Charles S. Wittenberg
Attorney for Defendant

APPENDIX E

Form 1

IN THE COMMON PLEAS COURT OF LUCAS COUNTY, OHIO

Chetister

Plaintiff

vs

Chetister

Defendant

No. 82-1161

JOURNAL ENTRY

Motion for a new trial submitted considered found not well taken and is hereby overruled.

s/s _____
JUDGE

Approved:

APPENDIX F

IN THE SUPREME COURT OF OHIO

Lavaun Chetister, Plaintiff-Appellant,	:	No. 84-336
	:	C.A. No. L-83-318
- vs -		Sixth Appellate.
	:	
James G. Chetister, Defendant-Appellee.	:	C.P. No. 82-1161 Lucas County.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Lavaun Chetister, the appellant above-named, hereby appeals to The Supreme Court of the United States from the final decree of The Supreme Court of Ohio, denying appellant's motion for rehearing entered on May 9, 1984, overruling appellant's motion for an order directing the Court of Appeals for Lucas County to certify its record, entered in this action on April 11, 1984.

This appeal is taken pursuant to Title 28, United States Code, Section

APPENDIX F

1257, subparagraph three (3).

Dated: July 30, 1984.

s/s_____

Walton H. Donnell
ATTORNEY FOR APPELLANT
139 East Court Street
Bowling Green,OH 43402
Telephone:(419)352-2616

PROOF OF SERVICE:

This is to certify that a copy of appellant's Notice of Appeal to The Supreme Court of the United States was hand delivered to Sixth Appellate District, Courthouse, Toledo, Ohio, said court is the possessor of the record, and to appellee's attorney, Charles S. Wittenberg, at 540 Spitzer Bldg., Toledo, Ohio, this 30th day of July, 1984.

s/s_____
Walton H. Donnell

APPENDIX G

MOTION FOR REHEARING

Appellant Lavaun Chetister respectively requests the Court to reconsider its decision and order dated April 11, 1984, overruling her motion for an order directing the Court of Appeals to certify its record, upon the grounds that:

1. A newly discovered Ohio Supreme Court case[1] reveals a "fairness" policy approved by the Supreme Court and used in the Eleventh Appellate District since 1974, a fairness policy that is completely lacking in the Sixth Appellate District.

2. Four other Ohio Supreme Court cases[2] since 1971 reveal the the Supreme Court accepted jurisdiction--- twice from the very same Fifth Appellate District--- when the overriding question of great

public interest was identical to the question of great public interest in the instant case, i.e., to enforce compliance with App. R. 12(A).

3. "Legal larceny of the jury"[3] was committed by the Court of Appeals for the Sixth District in the instant directed verdict case when it chose not to comply with App. R. 12(A), and the refusal of the Supreme Court of Ohio to take jurisdiction in this case on April 11, 1984, is sufficient evidence[4] to show a deliberate attempt to discriminate, denying appellant the right to equal treatment under the law as guaranteed by the Fourteenth Amendment, and, further, denies appellant her right to a jury trial as guaranteed by the Constitution

APPENDIX G

of Ohio, Ohio Revised Code, and Seventh Amendment to Constitution of United States.

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1 Even though exercising due diligence, appellant could not find the "fairness" policy, as it was located in fn. 3 on p. 301 of the opinion in C. Miller Chevrolet v. Willoughby Hills (1974), 38 Ohio St. 2d 298.

2 State v. Jennings (1982), 69 Ohio St. 2d 389, Fifth District;
Smith v. Jagger (1973), 33 Ohio St. 2d 1, Fifth District;
Lumberman's Alliance v. American Excelsor Corp. (1973), 33 Ohio St. 2d 37, 8th.
Rothfuss v. Hamilton Masonic Temple Co. (1971), 27 Ohio St. 2d 131.

3 In her Memorandum In Support of Claimed Jurisdiction, appellant stated that the Supreme Court should take jurisdiction in Chetister because of App. R. 12(A) and "(t)o prevent legal larceny of the jury by lower courts in Ohio." (p.5).

4 The copy of the Journal Entry of Court of Appeals, pp. 18-20 of appellant's Appendix, clearly demonstrated that court's non-compliance with App. R. 12(A).

APPENDIX G

Procedural law substantially affect the rights of parties just as does the substantive law. The Court of Appeals did not comply with App. R. 12(A), nor did it comply with the "fairness" and "notice" policy set out by the Supreme Court in C. Chevrolet, supra. The Court of Appeals denied appellant equal treatment under the law in Ohio.

Further, by refusing to take jurisdiction of the instant case on April 11, 1984, after having taken jurisdiction in several other appellate districts in the state on the same question of great public interest-- the non-compliance with App. R. 12(A)--- the Supreme Court shows a deliberate attempt to discriminate, denying appellant the right to equal treatment under the law as guaranteed by the Fourteenth Amendment.

There is no policeman running around

the state of Ohio protecting appellants in each appellate district from unequal treatment under the law. Appellant can only look to the Supreme Court of Ohio, and has a right to, as procedural law in the Sixth District should be as equally applied as in the Fifth or Eighth or Eleventh District.

APPENDIX H

§2505.29 No appeal filed without leave of supreme court; exceptions. (GC § 12223-29)

No appeal shall be filed in the supreme court unless such court of a judge thereof grants leave to file such an appeal. Such leave need not be obtained to file an appeal as to the judgment or final order of the court of appeals, or a judge thereof, in cases involving questions under the constitution of the United States, or of this state, in cases which originated in the court of appeals, and as to proceedings of administrative officers as may be provided by law.

APPENDIX I

38 Ohio St. 2d] CHEVROLET, INC., v. HILLS.

Opinion, per O'Neill, C. J.

In reviewing the judgment of a lower court, a Court of Appeals is guided by App. R. 12(A), which provides that the Court of Appeals need only pass upon errors assigned and briefed; errors not specifically pointed out in the record and separately argued by brief may be disregarded. Nevertheless, nothing prevents a Court of Appeals from passing upon an error which was neither briefed nor pointed out by a party.[3]

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[3] In fairness to the parties, a Court of Appeals which contemplates a decision upon an issue not briefed should, as the Court of Appeals in this case did, give the parties notice of its intention and an opportunity to brief the issue.

APPENDIX J

§ 2505.03 Final order may be appealed; exception.

Every final order, judgment, or decree of a court and, when provided by law, the order of any administrative officer, tribunal, or commission may be reviewed as provided in sections 2505.04 to 2505.45, inclusive, of the Revised Code, unless otherwise provided by law, except that appeals from judgments of judges of county courts upon questions of law and fact shall be taken as provided in sections 1921.01 to 1921.16, inclusive, of the Revised Code.

APPENDIX K

OHIO RULES OF CIVIL PROCEDURE

Rule 50(E) Statement of basis of decision. When in a jury trial a court directs a verdict or grants judgment without or contrary to the verdict of the jury, the court shall state the basis for its decision in writing prior to or simultaneous with the entry of judgment. Such statement may be dictated into the record or included in the entry of judgment.

APPENDIX L

PARTIAL TRANSCRIPT OF PROCEEDINGS

BE IT REMEMBERED, That on the trial of the above-entitled cause, in the Court of Common Pleas of Lucas County, Ohio, in the May, 1983, Term of said Court, commencing on Wednesday, August 3, 1983, before the Honorable Richard B. McQuade, Jr., sitting by assignment, and a Jury duly impaneled and sworn, the following proceedings were had, to-wit:

THE COURT: Well, all right. As to the cause of action for the carpeting and the freezer repair and the lawnmower and bookcases, whatever items were paid for in Exhibits 6 through 13, I am granting the motion for directed verdict, I think, for several reasons. First of all, there is no contention that there was any written or verbal contract in which the Defendant was indebted to the Plaintiff for these amounts.

Secondly, the action is predicated on a fraud. If she thought that there was fraud, she should have known it the day in August when she left that house and should have made her claim. If there was fraud evident to her, it was then, and she's brought no action until apparently May of 1982.

In addition, there is a lot of case law that applies to the equitable doctrine of laches and estoppel to non-equitable cases. If there is a case in which it should be applied, this is one.